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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,630	11/17/2006	Toshihiko Fukasawa	06366/LH	5392
1933 7590 03/18/2009 FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708				
EXAMINER LE, DAVID D				
ART UNIT 3655		PAPER NUMBER		
MAIL DATE 03/18/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/581,630

Applicant(s)

FUKASAWA ET AL.

Examiner

David D. Le

Art Unit

3655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-850)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 07/22/08; 11/17/06; 06/02/06

DETAILED ACTION

1. This is the first Office action on the merits of Application No. 10/581,630, filed on 17 November 2006. Claims 1-4 are pending.

Documents

2. The following documents have been received and filed as part of the patent application:
 - Copy of Foreign Priority Document, received on 06/02/06
 - Information Disclosure Statement, received on 06/02/06
 - Declaration and Power of Attorney, received on 11/17/06
 - Information Disclosure Statement, received on 11/17/06
 - Information Disclosure Statement, received on 07/22/08

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation “wherein the speed change operation section in the first mode and the speed change operation section in the second mode are the same”. It is unclear what it is that is considered “the same” between the first and second speed change operation sections.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U. S.

Patent Application Publication No. US 2002/0027031 A1 to Miyata (hereinafter referred to as Miyata).

Claims 1, 3 and 4:

Miyata (Figs. 1-8; paragraphs [0006] to [0075]) discloses a vehicle comprising:

- A continuous stepless transmission (i.e., Fig. 3, element T);
- A controlling section (i.e., Fig. 2, element 56) for performing speed-changing operation of the continuous stepless transmission;
- A speed change operation section (i.e., Fig. 5, elements 61 and 62) adapted to switch a speed change ratio of the continuous stepless transmission;
- A shift-mode-switching section (i.e., Fig. 5, element 60) which switches a mode of a speed change ratios switching between a first mode for switching the speed ratio in stages among a plurality of preset speed change ratios and a second mode for switching the speed change ratio continuously;
- Wherein the control section comprises a vehicle speed setting section which sets a target vehicle speed at least based on a speed change operation signal detected by

operating the speed change operation section and a mode signal detected by switching the shift-mode-switching section (i.e., paragraphs 0054] to [0068]);

- Wherein the speed change operation section in the first mode and the speed change operation section in the second mode are parts of a control switch (i.e., Fig. 5, element 59);
- Wherein the vehicle can be a construction machine, and the speed change operation section is a push-button switch arranged on a traveling lever of the construction machine (i.e., paragraph [0053]).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyata in view of U. S. Patent No. 7,037,236 to Ishibashi et al. (hereinafter referred to as Ishibashi).

Claim 2:

Miyata discloses the limitations as set forth above. Regarding claim 2, *Miyata* lacks:

- Wherein the continuous stepless transmission is an HST.

Ishibashi (i.e., Figs. 1-2; column 9, line 35 – column 11, line 28), on the other hand, discloses a construction vehicle comprising an HST transmission.

Since all the claimed elements were known in the prior art, one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Nanri et al. (U. S. Patent No. 6,470,771) teaches a transmission system, as shown in Fig. 1.
- Nobumoto (U. S. Patent No. 5,823,052) teaches an automatic transmission control system, as shown in Figs. 1-5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Le whose telephone number is 571-272-7092. The examiner can normally be reached on Mon-Fri (0900-1730).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David D. Le/
Primary Examiner, Art Unit 3655
03/13/2009

ddl